Berkshire Hathaway subsidiaries deny, delay asbestos, hazard claims, suits, insiders allege

Mark Greenblatt, Scripps News
9:01 PM, Oct 5, 2013
11:40 AM, Oct 8, 2013

The Scripps National investigative team has uncovered dozens of allegations that a company th
KGTV

Warren Buffett (Photo from Getty Images)
The Scripps National investigative team has uncovered dozens of allegations that a company that is part of Warren Buffett's empire intentionally delays paying insurance money to victims of asbestos and toxic health hazards.
KGTV

For months, mysterious white flakes and construction dust fell on Nancy Lopez's desk in the Jackson County Courthouse in Kansas City, Mo.

No question the debris was worse after renovation crews worked the weekend. But really, the mess was getting out of hand. On that Monday in 1983, Lopez grabbed a rag and started dusting.

GALLERY - How float works: http://bit.ly/15P8PCF (http://bit.ly/15P8PCF)

SLIDESHOW - Asbestos in everyday life: http://bit.ly/16qAZm9 (http://bit.ly/16qAZm9)

The impeccably dressed young administrative assistant finished tidying her office and set to work. Unknowingly, she had brushed off her desk, into the air and into her lungs deadly asbestos fibers.

Those tiny fibers stayed with Lopez for decades, and, in 2009, at age 54, she learned she was dying from mesothelioma, an asbestos-caused cancer. She sued the construction company and the county (https://www.documentcloud.org/documents/801275-petition-for-damages.html) for negligence and punitive damages.

Lopez didn't realize her suit would eventually pit her against the empire built by acclaimed investor and philanthropist Warren Buffett. Buffett's Berkshire Hathaway Inc. of Omaha, Neb., has become one of the most powerful forces in asbestos and pollution litigation in the world.

Berkshire's reach has grown so vast that if you or a loved one files an asbestos- or pollution-related lawsuit in America, like Lopez, you're likely to encounter a Berkshire subsidiary.

Scripps interviewed more than 20 sources -- some confidential -- reviewed dozens of lawsuits and spoke with former insiders, who all allege the Berkshire-owned companies that handle its asbestos and pollution policies -- National Indemnity Co. and Resolute Management Inc. -- wrongfully delay or deny compensation to cancer victims and others to boost Berkshire's profits. In multiple cases, courts and arbitrators have ruled that the Berkshire subsidiaries' tactics have been in "bad faith" or intentional.

Through 25 known deals, insurers like American Insurance Group, CNA Financial Corp. and Lloyd's of London have paid Berkshire to assume their risk for tens of billions of dollars in future asbestos and pollution claims.

"I do believe we have the largest single exposure to asbestos and pollution claims of any insurer today," Berkshire Hathaway Reinsurance Division President Ajit Jain told Scripps via email (https://www.documentcloud.org/documents/800624-berkshire-emails.html). He and Warren Buffett declined repeated requests for interviews.

Until Berkshire has to pay those claims, it can invest and potentially profit from the money. And it gets to decide when claims get paid.

Lopez attorney Louis Accurso said the number of policies Berkshire's subsidiaries control could create a dangerous amount of influence over payouts to victims like his client.

"Whenever there is a concentration of power like that you have enormous potential for abuse," Accurso said.

Asbestos defendants often drag out court proceedings, Accurso said -- a strategy he called "delay, deny until they die." Juries, for their part, often award more money to sympathetic victims they can actually see on the stand.

Nancy Lopez died before insurers controlled by Resolute "made a single offer," Accurso said.

Like many mesothelioma victims, Lopez succumbed just 18 months after her diagnosis.

"Of all the cases in my career, what happened and how that played out ... gave me the most anger I can ever remember," said Accurso, who also delivered Lopez's eulogy.

Dozens of large corporations are angry, too.

Ford Motor Co. (https://www.documentcloud.org/documents/779796-ford-v-nationalindemnity-complaint-pdf.html), Estee Lauder Inc. (https://www.documentcloud.org/documents/779795-estee-lauder-decision.html) and others allege wrongdoing by Berkshire-owned National Indemnity and Resolute. These companies bought commercial policies to protect against long-term claims for pollution and health-related problems linked to their products or services. They're suing for reimbursement of fines, legal fees and payments of injury claims.

The idea of "float" is at the core of Berkshire's overall success. In short, float is the money an insurance company gets to hold between the time customers pay premiums and the time they make claims on their policies.

And it is something that Warren Buffett celebrates in his well-known annual letters to shareholders.

In his 2009 message he wrote (https://www.documentcloud.org/documents/801368-shareholder_letters.html#document/p25): "Our float has grown from $16 million in 1967, when we entered the business, to $62 billion at the end of 2009." By 2012, that number had grown to $73 billion.

Part of the growth has come from asbestos and pollution liability. Fifteen years ago, Berkshire started acquiring those policies because they offer so-called "long-tail float." Asbestos and pollution policies take a long time to pay out because the hazards they cover cause cancer and other illnesses that can take years or even decades to manifest. That allows Berkshire's money to stay invested longer and potentially generate bigger returns.

In 2011, Buffett wrote (https://www.documentcloud.org/documents/801368-shareholder_letters.html#document/p70) to shareholders: "We will profit just as we would if some party deposited $70.6 billion with us, paid us a fee for holding its money and then let us invest its funds for our own benefit."

It is this long-term float that is raising concerns.

As a former claims executive, Robert Burns took his orders from Resolute. In August of this year, he testified in Estee Lauder's ongoing New York lawsuit that Resolute routinely based claims-payment decisions on the company's financial goals, not the merits of each case.

Burns declined an interview. But Scripps exclusively obtained a copy of the recent video deposition in which Burns said under oath Resolute President Thomas Ryan set "targets" that were tracked by Berkshire executives.

"The entire operation was driven by the target numbers," Burns testified. "They wanted to hit the projected numbers in the books of business so they could maximize their return on investment."

Burns said company targets and projections ran 20 to 25 years into the future, designed for Berkshire to ensure its rate of return on its money.

And he testified that Ryan told him those targets had to be hit for Ryan to get his bonus.

Ajit Jain told Scripps, "Mr. Ryan, as well as others who work at the reinsurance division, are not paid based on a bonus structure; compensation is based on a fixed salary that is reviewed each year."

Jain did not respond to questions about any additional forms of compensation or incentives Ryan received or may receive, and said Ryan declined an interview.

Burns also testified that claims adjusters felt "extreme frustration" when bosses balked at paying what adjusters viewed as reasonable settlements. "We were told, 'You're not paying it. Find a way to avoid paying it.' "

On one asbestos deal, Burns said, he was instructed "it was cheaper to litigate than pay."

He gave similar testimony in a Massachusetts trial between Celanese International Corp. and Resolute over nonpayment of claims. In December 2009, the court ruled Resolute had committed a "willful or knowing" act that was "unfair or deceptive." The court awarded double damages (https://www.documentcloud.org/documents/777991-celanese.html#document/p133) against Resolute, a ruling Resolute did not appeal.

In an email exchange with Scripps, Jain declined to say how many bad-faith allegations have been lodged or settled against Resolute, National Indemnity or the insurance companies they manage asbestos and pollution claims for.

Berkshire's Jain said he was disappointed by the Celanese ruling, but insists "few insurance organizations have a higher reputational concern than we do. In administering these books, then, we need to be vigilant to pay valid claims, protect valid insurance policy defenses, and in the many instances where reasonable minds differ, seek to achieve reasonable compromises where possible."

But in courtrooms across the country, there are allegations that Berkshire has little interest in compromise.

In Kansas City, Charles Lute and two fellow building engineers sued the owner of the BMA Tower for injuries, after years of working around an asbestos-filled fire retardant they were told was "safe enough to eat for breakfast." Court documents say the building's owner, Liberty Life Insurance Co., wanted to settle (https://www.documentcloud.org/documents/779800-liberty-life-insurance-v-one-beacon-and-resolute.html) and blamed Resolute when a mediated deal fell through. Resolute's offer was so low, court documents say, Liberty paid the three men at the higher level, without knowing if it would be reimbursed by its insurer.

"Rarely in asbestos litigation are the injured victims and asbestos companies on the same side," New York asbestos attorney Joe Belluck told Scripps.

In 2009, a New York court ordered a "prompt" payment to Estee Lauder. Three years later, Resolute cut a $5 million check. Estee Lauder attorney John Schryber in a June 2013 interview said the delay led N.Y. Supreme Court, Appellate Division, Judge Carol Edmead to allow the cosmetics giant to add an allegation: one of "bad faith." (https://www.documentcloud.org/documents/779795-estee-lauder-decision.html#document/p71)

"What's going on here is a very sophisticated, legally oriented regimen by insurance companies and a mastermind at business in Warren Buffett," said Schryber of Dickstein Shapiro LLP in Washington.

In a 2010 California ruling in favor of Pepsi-Cola Metropolitan Bottling Co., U.S. District Judge Stephen Wilson found a "pattern of delays" (https://www.documentcloud.org/documents/779801-pepsi.html#document/p37) and no evidence justifying why claims weren't paid promptly.

"I don't think there's anything wrong with making money as long as you do it fairly," said J. Robert Hunter, head of the Consumer Federation of America's insurance division and former Texas insurance commissioner.

"Where the Buffett thing goes wrong -- the only way they're going to make money is to have them pay (claims) a little slower," Hunter said.

He points to Buffett's 2006 letter (https://www.documentcloud.org/documents/801368-shareholder_letters.html) to shareholders in which Berkshire's own chairman links the timing of claims payments to potential profits.

"How will Berkshire fare?" Buffett wrote. "That depends on how much 'known' claims will end up costing us and how many yet-to-be presented claims will surface and what they will cost, how soon claim payments will be made and how much we earn on the cash we receive before it must be paid out. Ajit and I think the odds are in our favor."

Hunter spotted another area of concern in Buffett's 2011 shareholder letter (https://www.documentcloud.org/documents/801368-shareholder_letters.html#document/p70) where he writes that Berkshire gets to invest the float "for our own benefit."

Hunter says laws in most states require investment earnings from the float be used "to make policies cheaper for people buying insurance" and not go "to the benefit of the insurer, as Buffett seems to be bragging about."

He cites a California rule that reads: "... the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income."

George Washington University law professor Lawrence Cunningham cautions that float is an "inherent feature" of insurance, and it's not unusual to see lawsuits in which policyholders or claimants say an insurer or claims administrator acted in bad faith by delaying payment.

Cunningham, who is also a Berkshire shareholder and has edited several editions of "The Essays of Warren Buffett," said Berkshire corporate culture rests on "unwavering commitment to integrity."

He said it would be "antithetical for the company to jeopardize that reputation by wrongfully delaying or denying claims or acting in any way inconsistent with faithful administration and payment of claims."

According to Berkshire executive Jain, his division pays $1.4 billion annually for asbestos claims and expenses. And "as is the case with any insurance company, the vast majority of claims are settled without trials," he said.

But Berkshire will be back in court in late October, this time against Ford Motor Co. (https://www.documentcloud.org/documents/779796-ford-v-nationalindemnity-complaint-pdf.html) over unpaid claims related to rollover deaths. Schryber represents Ford, but declined to answer questions about that case.

Nancy Lopez spent most of her shortened life -- she died at age 56 -- working in the Circuit Court in Kansas City. At her funeral in October 2010, she was remembered as the "heart of the division." But she never got her own day in court. The money her attorney eventually won on Lopez's behalf went to her family more than a year after her death.

(Contact Scripps national investigative correspondent Mark Greenblatt at mark.greenblatt@scripps.com (mailto:mark.greenblatt@scripps.com).)

GabriellaMcDonald
4 Months Ago

just as Wayne responded I'm impressed that a student able to get paid $4798 in four weeks on the internet. try here======= WWW.max47.CoM